

ORDINANCE NO. 017428

AN ORDINANCE AMENDING TITLE 7 (ANIMALS), CHAPTERS 7.04 (DEFINITIONS), 7.12 (DOGS AND CATS), 7.16 (IMPOUNDMENT), AND 7.24 (LIVESTOCK); AND TO CREATE CHAPTER 7.14 (ANIMAL SALES, BREEDING AND SHOWS); TO DEFINE TERMS; TO CLARIFY FEES AND REVISE REGULATIONS APPLYING TO SPAYED, NEUTERED, UNSPAYED AND UNNEUTERED DOGS AND CATS; TO REVISE PERMITTING PROCEDURES; TO PROVIDE FOR THE SERVICES OF ANIMAL WELFARE ORGANIZATIONS; TO REGULATE THE SALE OF MANY DOGS AND CATS, AND THE SALE AND TRANSFER OF ALL DOGS AND CATS YOUNGER THAN EIGHT WEEKS OF AGE; TO REQUIRE THAT A LITTER PERMIT NUMBER BE DISPLAYED IN ANY ADVERTISEMENT TO SELL OR TRANSFER PUPPIES AND KITTENS; TO REQUIRE ANIMALS RELEASED BY THE CITY AND ANIMAL WELFARE ORGANIZATIONS BE SPAYED OR NEUTERED; AND TO PROVIDE FOR THE REPORTING OF EUTHANIZED ANIMALS IN THE CITY; THE PENALTY BEING AS PROVIDED IN SECTION 7.04.080 OF THE EL PASO CITY CODE.

WHEREAS, on December 14, 1999, City Council by resolution acknowledged the City's euthanization rate of dogs and cats as being one of the highest in the nation and stated a goal of being a no-kill City by December 31, 2005; and

WHEREAS, achieving a "no kill" goal requires increasing the entire community's awareness of the critical animal care issues that the City of El Paso faces; and

WHEREAS, the City Council finds that each year, thousands of dogs and cats are euthanized in the City because they are not wanted, and the purpose of this ordinance is to promote the health, safety and welfare of the public and the local pet population by reducing the number of unwanted dogs and cats in the City, which will also reduce the burden on the taxpayers who pay much of the cost to care for or euthanize many thousands of animals; and

WHEREAS, the City finds that regulating the sale and transfer of dogs and cats, and including special provisions regarding the services of animal welfare organizations who work with dogs and cats that have been abandoned, recovered or found within El Paso County, Texas or a bordering county, is an appropriate solution to help eliminate the excessive numbers of unwanted dogs and cats, to reduce the euthanization rate, and to achieve the City's goals of achieving the "no kill" goal by restricting breeding practices through legislation that is both reasonable and enforceable and by promoting the adoption of the existing dog and cat population in and around El Paso County; and

WHEREAS, the City Council recognizes that another city in the region, Albuquerque, has found that spayed and neutered animals are less likely to run loose, bark excessively, and endanger the public and other animals, and most importantly, altered animals do not add to the overpopulation problem, and altered animals are less likely to end up at animal shelters that have no other option but to destroy those animals; and

WHEREAS, the City Council finds that the overpopulation of dogs and cats in the City is exacerbated by the reckless breeding of dogs and cats for the purpose of making a profit from the sale of these animals during the first year of their lives and implementing regulations relating to the sale of these animals and the regulation of breeders will further the City's goals as set forth above; and

WHEREAS, the City Council finds that providing education for the public on the issues relating to overpopulation, euthanization, responsible breeding and appropriate methods of pet care will also further the City's goals, and the Council encourages the department of public health and the community to develop and advance this community education, and in particular to educate the public on the importance of and need to provide veterinary care for animals at an early age and obtain preventive care for communicable diseases such as parvovirus, distemper, FIV and FeLeuk, as is age, species, and breed appropriate; and

WHEREAS, the City Council further finds that responsible pet owners and animal welfare organizations already provide adequate health care, proper food, and water and successfully restrain the animals in their custody and will not be overly burdened by the changes implemented in this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Title 7 (Animals), Chapter 7.04 (Definitions and Administration), Section 7.04.010 (Definitions) of the El Paso City Code, is amended to read as follows:

Section 7.04.010 Definitions.

- A. "Abandon" means to give up with the intent of never again claiming a right or interest in.
- B. "Animal" means every living dumb creature.
- C. "Animal establishment" means any established place conducting business dealing with animals for a profit including but not limited to grooming, kenneling, showing and exhibiting animals and excluding veterinary offices, clinics, hospitals or emergency rooms. An individual providing care for an animal in the absence of its owner, in the owner's home, will not be considered an "animal establishment."
- D. "Animal welfare organization" means a tax-exempt nonprofit organization founded for the purpose of providing humane sanctuary, a shelter for abandoned or unwanted animals, or recognized animal rescue organization, that is registered and permitted by the department pursuant to Sections 7.14.010 and 7.14.090 of this code.

E. "Bite" or "scratch" means any abrasion, scratch, puncture, tear or piercing of the skin actually or suspected of being caused by an animal.

F. "Bovine" is used in its general sense and includes all domesticated bovine regardless of age, sex or breed.

G. "Canvassing" means periodic verification of compliance with this title by the city utilizing personnel trained to go door-to-door within the incorporated city limits.

H. "Center" means any premises designated by the city for the purpose of impounding and caring for animals coming into the custody of the department of public health and in which the program is housed.

I. "Collar" means a band, chain, harness or other suitable device worn around the neck of an animal to which a current rabies vaccination and registration tag can be affixed.

J. "Dangerous dog" means a dog that:

1. Makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept; or
2. Commits unprovoked acts in a place other than an enclosure in which the dog was being kept and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.

K. "Dangerous wild animal" includes but is not limited to:

1. Lion;
2. Tiger;
3. Ocelot;
4. Cougar;
5. Leopard;
6. Cheetah;
7. Jaguar;
8. Bobcat;
9. Lynx;
10. Serval;
11. Caracal;
12. Hyena;
13. Bear;
14. Coyote;
15. Jackal;
16. Baboon;
17. Chimpanzee;
18. Orangutan;
19. Gorilla;
20. Wolf; or
21. Any hybrid of an animal listed in this definition.

L. "Deputy director" means the deputy director for animal services for the department of public health, or his designee.

M. "Director" means the director of the department of public health, or his designee.

N. "Department" means the department of public health.

O. "Dog" or "cat", unless otherwise specifically set forth with an age limit, shall include a "puppy" or "kitten" and the terms are interchangeable.

P. "Equine" is used in its general sense and includes all domesticated equine regardless of age, sex or breed.

Q. "Established fee" means a fee that is authorized within this title, which is set in the amount identified in the adopted budget resolution for the current fiscal year or by other appropriately adopted resolution of the City Council.

R. "Exotic animal" means any animal not commonly domesticated by man.

S. "Exposed to rabies" means that an animal has been bitten by or in contact with any animal known to be, or suspected of being, infected with rabies.

T. "Fowl" means domestic birds to include chickens, ducks, geese and pigeons.

U. "Kennel", for purposes of this title, means any premises on which animals are kept or housed for conducting the business of buying, selling, grooming, training or boarding of animals for compensation.

V. "Livestock" means domesticated equine or bovine regardless of age, sex or breed or any small ruminant, including domesticated sheep, goats, and animals of the same approximate size and weight.

W. "Low risk" means an animal identified in Texas guidelines for rabies prevention as not requiring rabies testing. Includes mice, rats, squirrels, nutria, rabbits, opossums, armadillos, shrews, prairie dogs, beavers and gophers.

X. "Neglected" means to fail to provide an animal with one or more of the necessities of life, including air, food, water, veterinary care, exercise or protection from the sun and other elements of nature.

Y. "Officer" means any employee of the program, an employee in the code enforcement division, or a commissioned peace officer.

Z. "Owner" means a custodian, caretaker or person who feeds or harbors the subject animal for more than seventy-two hours without the presence of that subject animal being recorded in the records of the program as a stray animal. Persons caring for an animal at the specific request of an owner are not included in the definition of owner, but are required to keep the animal in compliance with this code.

AA. "Program" means the department's animal services program.

BB. "Public playground" means that area of a public park designated and intended for use by children and containing equipment suitable for play (i.e., swings, slides, merry-go-rounds).

CC. "Qualified animal" means (1) a pure-breed animal which is currently registered with an applicable registry which has been established for the purposes of breed registration with the primary or intended purpose of exhibiting, showing, competing, or certifying the animals at local, national, international or breed club-sanctioned events or shows, and which is also eligible for registry with one or more additional agencies, and which may be bred or placed for the specific goal of exhibition or competition, or (2) an animal which is bred solely for the intended purpose of being trained and certified as service animals, for search and rescue use, or for official use by law enforcement and governmental agencies.

DD. "Rabbit" is used in its general sense and includes animals of the same approximate size and weight, which require similar husbandry.

EE. "Retail establishment" means an establishment that, in whole or in part, offers as allowed under this title dogs and/or cats for sale or resale to consumers or wholesalers, excluding a permitted breeder.

FF. "Service animals" means any guide dog, signal dog, or other animal individually trained to provide assistance to a person with a disability, or any animal recognized as a service animal pursuant to the Americans with Disabilities Act of 1990, as amended.

GG. "Shade" means a place giving protection from the heat and light of the sun.

HH. "Shelter" means an enclosure that is structurally sound and in good repair, provides convenient access to clean food and water, enables the animal to remain dry and clean, is constructed and maintained so that it is impervious to moisture and can be readily sanitized, is constructed so as to protect the animal from injury, and provides sufficient space to allow each animal to turn around fully, stand, sit and lie in a comfortable position.

II. "Transfer" or "offer to transfer" means to convey or offer to convey by all methods of conveyance

JJ. "Unprovoked attack" means an attack by a dog on a person in a place, other than the property where the dog's owner resides or where the dog is being kept, including but not limited to, the secure enclosure in which the dog was being kept at the time of the attack, that is not:

1. In response to being tormented, abused, or assaulted by the person attacked;
2. In response to pain or injury;
3. In response to an assault or attempted assault upon another person by the person attacked;
- or
4. To protect itself, its food, or its nursing offspring.

KK. "Vaccination" means inoculation of an animal with a vaccine that is licensed by the United States Department of Agriculture, and which is administered by a veterinarian for the purpose of immunizing the animal against rabies.

LL. "Veterinarian" means a doctor of veterinary medicine who holds a valid license to practice his profession in one or more of the fifty United States.

MM. "Veterinary clinic" means a facility or hospital for diagnosis and treatment of animals.

NN. "Veterinary officer" means the veterinarian or other person determined to be qualified to perform the duties established in this title, officially designated by the director.

Section 2. That Title 7 (Animals), Chapter 7.04 (Definitions and Administration), Section 7.04.030 (Enforcement—Right of entry—Interference with officer) of the El Paso City Code, is amended to read as follows:

7.04.030 Enforcement—Right of entry—Interference with officer.

A. The director, deputy director, and veterinary officer shall be primarily responsible for the enforcement of this title, and are authorized to delegate enforcement authority to their designated employees and to coordinate and work directly with the employees in the code enforcement division who shall also have enforcement authority, and to utilize the resources of the department in any public health emergency.

B. For the purpose of discharging the duties imposed by this title and to enforce its provisions, any officer is empowered at all reasonable times and upon presentation of appropriate credentials, to enter any premises upon which an animal is kept or harbored and to demand the exhibition, by the owner of a dog or cat, of the certificate of vaccination, verification of microchip, and certificate of registration for such dog or cat. It is further provided that any officer may enter, at all reasonable times and upon the presentation of appropriate credentials,

the premises where an animal is kept in an allegedly cruel or inhumane manner and demand to examine or impound such animal, when in his opinion it requires humane treatment. No officer shall, however, enter a private residence for purposes of making an inspection under this chapter without first receiving permission from an occupant of such residence or being authorized to inspect such residence by a magistrate or by order of a court of competent jurisdiction as provided by law.

C. No person shall interfere with, hinder or molest any officer in the performance of his duty.

D. Nothing in this section shall be construed to limit an officer's ability to enter upon a premise when a violation of this title or other law occurs in their presence and entry is made in accordance with state and federal law.

E. Canvassing may be conducted by any officer at the direction of the director, deputy director, veterinary officer, or code enforcement division supervisor when deemed necessary to ensure compliance with this title.

Section 3. That Title 7 (Animals), Chapter 7.04 (Definitions and Administration), Section 7.04.110 (Reports to Council) of the El Paso City Code, be added to read as follows:

Section 7.04.110 Reports to Council.

A. The City Manager or his designee will compile statistics regarding the number of animals impounded by the City and the outcome of each impoundment and provide the City Council with reports containing this information on a semi-annual basis or as otherwise directed by the City Council. Each report shall include the following specific information:

1. a comparison of the number of animals euthanized during the current reporting period with the number of animals euthanized during the prior reporting period;
2. categorize each animal impounded, released and euthanized to the greatest extent practicable by terms that relate to or identify the animal's health or behavior, and the number of each that were microchipped;
3. information as to the number of registrations for the current reporting period and a comparison to the number of registrations from the prior reporting period, the types and number of permits issued by the program; and
4. statistics concerning enforcement activities of the program, with a particular focus on enforcement pertaining to litter permits and breeder permits.

B. The department shall establish a policy and procedure for categorizing each animal pursuant to subsection A 2, in accordance with the requirements established for the department in this title pertaining to euthanizing animals, or by using appropriate definitions or standards as are industry-established or recognized.

Section 4. That Title 7 (Animals), Chapter 7.04 (Definitions and Administration), Section 7.04.120 (Severability) of the El Paso City Code, be added to read as follows:

Section 7.04.120 Severability.

If any section, subsection, sentence, clause or phrase of this title is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this title.

Section 5. That Title 7 (Animals), Chapter 7.12 (Dogs and Cats), Section 7.12.020 (Registration, Vaccination, and Microchips Required) of the El Paso City Code, is amended to revise the section title and to read as follows:

Section 7.12.020. Registration, Vaccination, and Microchips Required.

A. Dogs, cats and ferrets shall be registered, vaccinated and have an implanted microchip as provided in this title.

1. No person who is a resident of the city shall have within the city for more than thirty days any dog, cat or ferret four months of age or older unless such dog, cat or ferret is currently registered with the program.
2. No person who is not a resident of the city shall have within the city any dog, cat or ferret for more than ninety (90) days unless such dog, cat or ferret is currently registered with program.
3. No dog, cat or ferret shall be registered unless it has a current vaccination as is required by the director and an implanted microchip. A registration certificate and tag may be obtained from veterinarians who have obtained authority from the program to issue them, or from an employee at the center upon presentation of a certificate of current vaccination and evidence of microchip.
4. No person shall have within the city any dog, cat or ferret four months of age or older for more than ten (10) days unless such dog, cat or ferret is currently vaccinated against rabies.

B. Upon application by a veterinarian, the program shall furnish the veterinarian with a supply of microchips and pre-numbered registration certificates and corresponding tags. The veterinarian shall be authorized to receive applications and issue registration certificates and tags for animals that are currently vaccinated and microchipped. Copies of all certificates issued shall be distributed and transmitted to various city agencies in accordance with arrangements made by the program with the veterinarians, provided that no information shall be released in violation of Texas Health and Safety Code Section 826.0211. When applying for additional microchips, certificates and tags the veterinarian shall account to the program for all those previously supplied to him, and shall remit to the program all fees collected. He shall be held financially responsible for any microchips, certificates and tags no longer in his possession that have not been issued or voided and returned to the program. The program may refuse to supply additional microchips, certificates and tags to any veterinarian who fails to account for all items previously furnished to him by the program. All fees collected by any veterinarian are payable to the city upon demand.

C. Application for initial issuance or renewal of each registration must be made by the owner in writing or in person, and be accompanied by the established fee for a dog, cat, or ferret. If an original current registration certificate is lost or destroyed, the owner may obtain a duplicate by paying the established fee.

D. A registration shall be renewed annually.

E. No person shall use a certificate or tag for any animal other than the one for which it was issued.

F. If there is a change in ownership or owner contact information of a registered dog, cat or ferret, the new owner shall update contact information to include any new address and telephone number, and have the registration and microchip information transferred to his name or new contact information within seven (7) days after the change in ownership or change in owner contact information. Application for a change of ownership or change of contact information of a registered dog, cat or ferret shall be made to the program in the manner established by the director in writing, in person, or at the office of a participating veterinarian, and be accompanied by the established fee.

G. Fee-exempt registrations may be issued for the following, provided however, eligibility for fee-exempt registration does not relieve the owner of his responsibility under other provisions of this title:

1. Dogs that are trained and used in an official capacity by a law enforcement or governmental agency;
2. Service animals; and
3. Animals other than dogs, cats or ferrets that are vaccinated against rabies;

Section 6. That Title 7 (Animals), Chapter 7.12 (Dogs and Cats), Section 7.12.030 (Collar and tag required), Subsection E., of the El Paso City Code, is amended to read as follows:

Section 7.12.030, E. Collar and tag required.

E. If such tag is lost or destroyed, the owner shall apply at the center in writing, in person, or at the office of a participating veterinarian, for a new tag by presentation of the applicable vaccination certificate, registration certificate, and evidence of microchip, accompanied by the established fee.

Section 7. That Title 7 (Animals), Chapter 7.14 (Animal Sales, Breeding and Shows), of the El Paso City Code, be created.

Section 8. That Title 7 (Animals), Chapter 7.14 (Animal Sales, Breeding and Shows), Section 7.14.010 (Permits required), of the El Paso City Code, is added to read as follows:

Section. 7.14.010 Permits required.

A. No person shall operate an animal establishment or otherwise conduct the grooming, kenneling, or boarding of animals for a fee; or conduct the breeding, showing, or exhibiting of dogs or cats; without obtaining a valid permit for each purpose or activity as provided in this chapter.

B. The owner or operator of an animal welfare organization may become qualified to engage in the operations and obtain the benefits allowed under this title, by obtaining a permit from the department that recognizes and registers the organization for all purposes under this title.

C. A person who owns a qualified animal and who is 18 years of age or older and desires to engage in the breeding of such qualified animal and obtain the benefits allowed under this title, may become qualified to engage in such activity by obtaining a breeder's permit as provided in this chapter.

D. Application for the permits required in this section shall be made as provided in Section 7.04.090 and as further required in this chapter, and be accompanied by payment of the established fee. In addition to the information required under Section 7.04.090 and the applicable sections of this chapter, an applicant for a permit under this section shall submit the following information:

1. the location of the premises where the animals will be located or the business involving the animals will be conducted;
2. the acreage or square footage where such animals are to be kept;
3. the number of such anticipated animals, or average numbers of such animals;
4. the kinds of enclosures within which they are to be kept; and
5. information or evidence of compliance with the city's zoning ordinances for facilities, activities, and operations conducted on property within the city limits.

E. No permit authorized under this title shall be issued for animals kept in violation of the city's zoning ordinances.

F. The director or deputy director shall make any and all inspections deemed necessary for the issuing of permits and to ensure compliance with this chapter.

G. The director may impose a requirement for an applicant to undertake a basic training course relating to animal care or breeding, as appropriately relating to a particular permit and as may be developed by the department, as part of the requirements for obtaining a permit under this title.

H. All permits required under this chapter shall be renewed annually by the last day of the month in which the permit was issued the previous year, accompanied by payment of the established fee, except that all permits for animal welfare organizations shall be issued at no charge to the organization, and a permit for a breeder shall be issued a three year period. No permit shall be transferable to a third party.

Section 9. That Title 7 (Animals), Chapter 7.14 (Animal Sales, Breeding and Shows), Section 7.14.020 (Dog and cat sales and transfers), of the El Paso City Code, is added to read as follows:

Section 7.14.020 Dog and cat sales and transfers.

A. No person shall sell a dog or cat except as provided in this title.

B. No person who advertises to sell or transfer a dog or cat that is under the one year of age may charge the purchaser or transferee an amount that is greater than is allowed in subsection E.

C. No retail establishment may sell or transfer a dog or cat that is under one year of age for a charge or amount that is greater than is allowed in subsection E. Provided however, a retail establishment may, from January 1, 2011 through March 31, 2011, sell a dog or cat under the age of one year that is documented to have been in the retail establishment's possession in the city of El Paso on December 31, 2010 at a charge or amount not to exceed the charge or amount advertised or posted for each dog or cat on December 31, 2010.

D. No animal welfare organization, in the course of transferring a dog or cat that is under one year of age, may request a charge or amount from a transferee than is greater than is allowed in subsection E.

1. All dogs and cats over the age of four months that are transferred to a new owner shall be spayed or neutered, except as otherwise allowed in this title or under state law.
 2. Prior to transferring any dog, cat or ferret to a new owner, an animal welfare organization shall check such animal for a microchip, and report the finding of a microchip to the program unless the animal is returned to the registered owner.
 3. Every dog, cat or ferret coming into the possession of an animal welfare organization, received in any manner other than a release by the owner of the dog, cat or ferret, must be held a minimum of three (3) full days if the dog, cat or ferret did not have a registration tag or microchip at the time of initial possession, or for a minimum of six (6) full days if the dog, cat or ferret had a registration tag or microchip, before the animal may be transferred to a transferee/new owner.
 4. Any animal may be transferred by an animal welfare organization to the department or to another animal welfare organizations before the minimum holding time required under this section, provided however the receiving organization or the department must continue to hold the animal for such additional time as to meet the minimum requirements of this title.
 5. Nothing in this chapter shall prohibit an animal welfare organization from receiving donations consistent with an organization's non-profit status.
- E. The maximum amount of charges that can be made or requested under subsections B, C, and D for the sale or transfer of a dog or cat under one year of age are established for the purpose of allowing a seller, retail establishment or animal welfare organization to recover the following-listed expenses and costs incurred in conjunction with caring for the dog or cat, and are set as follows:
1. If the amount or charges made or requested in accordance with this section for the sale or transfer of a dog or cat under the age of one year exceeds \$50.00 per animal, a person, retail establishment, or animal welfare organization selling or transferring the dog or cat shall provide documentation of all expenses incurred other than the cost of food to the purchaser or transferee prior to the sale or transfer, and the amount of the charges made or requested shall not exceed the total amount of the documented expenses provided plus the cost of food, and in the case of an animal welfare organization, the cost of providing shelter. The purchaser or transferee shall be provided with a copy of all such documentation at the time of sale or transfer.
 2. If such documentation is not available or cannot be provided to the purchaser or transferee prior to the sale or transfer, the maximum amount that can be charged or requested is \$50.00 if the dog or cat has not been spayed or neutered or \$150.00 if the dog or cat has been spayed or neutered. If the animal was spayed or neutered, the purchaser or transferee shall be provided with the name and address of the veterinarian who performed the surgery at the time of sale or transfer.
 3. This section shall not apply to:
 - a. a retail establishment selling a dog or cat that is documented to have been in the retail establishment's possession in the City of El Paso on December 31, 2010 as provided in subsection C;
 - b. a permitted breeder holding a litter permit and selling a qualified animal; or
 - c. an individual holding a litter permit who does not conduct any advertisement for the sale of the animals within the city, including but not limited to making an open or public offering of the animals to the general public.

F. Every person, to include but not be limited to a retail establishment, breeder, and animal welfare organization, shall maintain accurate records of all sales, transactions, and transfers involving animals, which records shall show the date, type of animal, type of activity, and parties involved in any transaction or transfer of an animal. Such records shall be kept for two years, and will be made available upon demand to the program.

G. The director or deputy director shall make any and all inspections deemed necessary to ensure compliance with this section and all required permits. Animals shall be kept under sanitary conditions so as not to endanger the public or animal health nor create a nuisance.

H. No person, including but not limited to a retail establishment, breeder, animal establishment, or animal welfare organization, shall release a dog, cat or ferret four months of age or older to any person unless such dog, cat or ferret is currently vaccinated against rabies and microchipped for identification.

I. Animals which are offered for sale or transfer to the public shall not be displayed or offered if they bear evidence of malnutrition, ill health, unhealed injury or having been kept in unsanitary condition, unless such sale or transfer is approved in writing by a veterinarian providing treatment for the subject animal.

J. Nothing in this section prohibits a retail establishment from allowing an animal welfare organization to use the retail establishment's premises for the transfer of dogs and cats in compliance with this title.

Section 10. That Title 7 (Animals), Chapter 7.14 (Animal Sales, Breeding and Shows), Section 7.14.030 (Sale of certain puppies and kittens prohibited), of the El Paso City Code, is added to read as follows:

Section 7.14.030 Sale of certain puppies and kittens prohibited

No person may sell or offer for sale or transfer in any manner, a puppy or kitten under the age of eight (8) weeks other than a puppy or kitten, or litter or litters taken to the Department or to an animal welfare organization, or transferred between such organizations.

Section 11. That Title 7 (Animals), Chapter 7.14 (Animal Sales, Breeding and Shows), Section 7.14.040 (Roadside and flea market sales), of the El Paso City Code, is added to read as follows:

Section 7.14.040 Roadside and flea market sales.

It is unlawful for any person to sell, trade, barter, lease, rent, give away, or display for a commercial purpose any animal on any roadside, public right-of-way, commercial parking lot, or at any flea market or festival, provided, however, that this paragraph shall not apply to an animal welfare organization when such organization has received prior written approval for such sale from the deputy director and is complying with the specific limitations as set forth in the authorization, and with the requirements of Chapter 13.20 of this code.

Section 12. That Title 7 (Animals), Chapter 7.14 (Animal Sales, Breeding and Shows), Section 7.14.050 (Animal litter permit), of the El Paso City Code, is added to read as follows:

Section 7.14.050 Animal litter permit.

- A. Any person who intentionally or unintentionally breeds a female dog or cat, or who owns or has custody of or control over a litter of puppies or kittens must obtain an animal litter permit and pay the established fee within fourteen days of the litter's birth.
- B. The issuance of a litter permit authorizes the whelping of no more than one litter per the female dog or cat identified in the permit in any twelve-month period.
- C. The issuance of a litter permit does not authorize the sale of any puppies or kittens from the litter, except as permitted in this title.
- D. Any owner, or person advertising the sale or other transfer of a puppy or kitten under four months of age located within the city limits shall include or display the litter permit number on such advertisement regardless of the media used for such advertisement, and all charges or prices listed in such advertisements must be in compliance with the requirements of Section 7.14.020.
- E. Any breeder advertising the sale or other transfer of a qualified animal shall include or display the breeder permit number in addition to the litter permit number on such advertisement regardless of the media used for such advertisement.
- F. The provisions in Subsections A and D do not apply to the department, an animal welfare organization, or a veterinarian or veterinary facility, which has received abandoned puppies or kittens.

Section 13. That Title 7 (Animals), Chapter 7.14 (Animal Sales, Breeding and Shows), Section 7.14.060 (Animal establishments – Operations, shows and exhibitions), of the El Paso City Code, is added to read as follows:

Section. 7.14.060 Animal establishments – Operations, shows and exhibitions.

- A. Every animal establishment shall maintain accurate records of all transactions, shows and exhibitions involving animals, which records shall show the date, type of animal, type of activity, and parties to any transaction or transfer of an animal. Such records shall be kept for two years and will be made available upon demand to the program.
- B. Animals shall be kept under sanitary conditions so as not to endanger the public or animal health nor create a nuisance.
- C. In cases involving a bona fide scientific or educational program, a show or exhibition made available for free to the public, or animals owned by the city, the veterinary officer may waive the requirements of this title concerning permits, fees or conditions if he finds that such waiver would not endanger the public or animal health or safety nor create a nuisance.
- D. Animals shall not be displayed or exhibited to the public if they bear evidence of malnutrition, ill health, unhealed injury or having been kept in unsanitary condition, unless such display or exhibit is approved in writing by a veterinarian providing treatment for the subject animal, and such approval is made available to the department for inspection at the time of the display or exhibit.

Section 14. That Title 7 (Animals), Chapter 7.14 (Animal Sales, Breeding and Shows), Section 7.14.070 (Animal establishment—Permit—Application Fees), of the El Paso City Code, is added to read as follows:

7.14.070 Animal establishments—Permit—Application—Fees.

- A. Application for a permit to operate an animal establishment, including a show or exhibition, shall be made as provided in Section 7.04.090, and shall contain the information required herein and in Sections 7.04.090 and 7.14.010 of this code.
- B. In addition to the information required under Sections 7.04.090 and 7.14.010, an applicant for a permit under this section shall submit evidence or information as to the methods by which the applicant will comply with the requirements of Section 7.14.060 of this code.
- C. No permit may be issued or renewed under this section without the review and approval of the veterinary officer or other designee of the director that the applicant has submitted adequate evidence or information as required by subsection B.
- D. Except as provided herein, all permits under this section shall be issued in accordance with Section 7.04.090 and shall be valid for twelve months, and may be renewed as provided in section 7.14.010 of this code. Permits to show or exhibit animals (rodeos, circuses, shows, etc.) shall be valid only for the thirty-day period immediately following issuance.

Section 15. That Title 7 (Animals), Chapter 7.14 (Animal Sales, Breeding and Shows), Section 7.14.080 (Breeder's permit), of the El Paso City Code, is added to read as follows:

Section 7.14.080 Breeder's permit.

- A. Application for a breeder's permit shall be made as provided in Section 7.04.090, and shall contain the information required herein and in Sections 7.04.090 and 7.14.010 of this code.
- B. In addition to the information required under Sections 7.04.090 and 7.14.010, an applicant for a permit under this section shall submit the following information:
 - 1. Whether the qualified animals are dogs or cats or both species, and the organizations or registries with which these qualified animals are registered;
 - 2. A declaration of intent to breed only currently registered purebred animals of the same type and registry which are also eligible for registry with one or more additional registration agencies and that the offspring of any breeding are expected to be eligible for registration with the same registry, and/or to breed animals solely for the intended purpose of being trained and certified as service animals, for search and rescue use, or for official use by law enforcement and governmental agencies;
 - 3. A statement that the applicant will not breed a qualified animal, other than service animals and animals for search and rescue use or for official use by law enforcement and governmental agencies, outside the age parameters as set by their sanctioned breed club or registry standards;
 - 4. An agreement to provide copies of documents evidencing compliance with the requirements of this section at the request of the program;
 - 5. The names of primary care-givers for the qualified animals in addition to the applicant;
 - 6. A statement as to whether the applicant, any person identified under subsection B 5, or any person who resides at the premises where the qualified animal lives, has ever been

convicted of or is on deferred adjudication for neglect, mistreatment or cruelty to animals; and

7. Provide evidence that all animals in the possession of the applicant are in compliance with all provisions of this title.

C. All permits under this section shall be issued in accordance with Section 7.04.090, provided however, no permit shall be issued to an applicant if the applicant, or any person residing at the premises where the qualified animal lives, when the director determines that such person has been convicted of or is on deferred adjudication probation for a violation of any federal, state, or local law or regulation for neglect, mistreatment or cruelty to animals that is relevant to the propriety of the issuance of the permit. Such a conviction or deferred adjudication occurring after a permit is issued may be grounds for the revocation of the permit. All permits shall be valid for thirty-six months, and may be renewed as provided in section 7.14.010 of this code.

D. Prior to issuing the permit, or upon an annual basis after the permit is issued, or at any time when the director or deputy director has a reasonable basis to believe that an inspection is necessary to analyze or determine the appropriate status of the permit, they or their designees may inspect the qualified animal's living area during normal business hours upon giving the applicant a minimum of 24 hours notice. The applicant shall have an opportunity to be present at the time of inspection or to designate a representative to be present.

E. The issuance of a breeder's permit does not authorize the sale of any puppies or kittens from a litter, unless the breeder has also obtained a litter permit and complied with all other applicable provisions of this title, including but not limited to the requirements for advertising.

Section 16. That Title 7 (Animals), Chapter 7.14 (Animal Sales, Breeding and Shows), Section 7.14.090 (Animal Welfare Organization permit), of the El Paso City Code, is added as follows:

Section 7.14.090 Animal welfare organization permit.

A. Application for a permit to operate an animal welfare organization shall be made as provided in Section 7.04.090, and shall contain the information required herein and in Sections 7.04.090 and 7.14.010 of this code.

B. In addition to the information required under Sections 7.04.090 and 7.14.010, an applicant for a permit under this section shall submit the following information:

1. The organizational structure of the organization, including the names and address of the members of the governing board;
2. If the organization is a tax-exempt non-profit corporation, information evidencing the non-profit status, along with evidence that the organization is in good standing with the Texas comptroller of public accounts;
3. If the organization is not a tax exempt non-profit corporation, a description of the organizational structure and the length of time it has existed, and if the organization has never been permitted by the city under this section or approved as a rescue partner with the department, a letter of recommendation from an permitted animal welfare organization or a veterinarian;
4. Complete or update as necessary a previously completed rescue partner application as developed by the department and provide information as to how the organization will operate, how it will hold its animals, its plans for dealing with animals with behavior

problems and medical/health problems; how it will acquire veterinary care for animals when necessary, how it will train any employees or volunteers, and how it will find new homes for animals;

5. Provide information as to the types of animals that the organization will work with and the anticipated maximum number of animals the organization will hold at any one time;
6. Provide information regarding the anticipated percentage of work that will be undertaken by the organization regarding dogs and cats that have been abandoned, recovered or found within El Paso County, Texas or a bordering county;
7. Explain the organization's policies and procedures for accepting the return of any dog or cat that had been less than one year of age when the organization transferred it to a new owner; and
8. Provide a copy of the most recent annual shelter inspection report required under Texas Health and Safety Code Section 823.003(d), or if the organization is foster-based, a letter from a veterinarian indicating that he has inspected some or all of the foster homes for the health and welfare of the animals and the findings thereof.

C. All permits under this section shall be issued in accordance with Section 7.04.090 at no cost and shall be valid for twelve months, and may be renewed as provided in section 7.14.010.

D. Prior to issuing the permit, or at any time when the director or deputy director has a reasonable basis to believe that an inspection is necessary to analyze or determine the appropriate status of the permit, they or their designees may inspect any premises identified under subsection B 8 during normal business hours or other agreed-upon hours upon giving the applicant a minimum of 24 hours notice. The applicant shall have an opportunity to be present at the time of inspection or to designate a representative to be present.

Section 17. That Title 7 (Animals), Chapter 7.16 (Impoundment), Section 7.16.020 (Redemption - Disposition) of the El Paso City Code, is amended to read as follows:

Section 7.16.020 Redemption - Disposition.

A. The owner of any impounded dog or cat shall be entitled to resume possession of such dog or cat upon payment of the established impoundment and daily handling fees and compliance with vaccination, registration, microchipping, spaying or neutering requirements, and other legal requirements for keeping such dog or cat.

B. An additional fee in the amount established by the Council shall be paid by the owner of an unaltered dog or cat more than four months of age that is impounded by the program for a second time within a one year period, upon a third time within a two year period or upon a fourth and each subsequent time during the animal's life. To further the City's interest in combating pet overpopulation and promoting spaying and neutering of pets as part of responsible dog and cat ownership, the city will refund the additional established fee to the owner if the owner provides evidence to the program that the dog or cat was spayed or neutered within 30 days after the day the owner resumed possession of the dog or cat. All requests for a refund under this section shall be submitted to the program no later than the 60th day after the date the dog or cat was spayed or neutered and only one fee paid under this subsection is eligible for a refund.

C. Any animal other than a dog or cat impounded may be reclaimed by the owner upon payment of impoundment and daily handling fees and compliance with other legal requirements for keeping of such animal.

D. Any animal impounded and not claimed by the owner may be humanely destroyed after being held for at least three (3) days after the day of impoundment; provided however, that any impounded dog, cat or ferret found to be microchipped or displaying a current vaccination and/or registration tag shall be held for at least six (6) days after the day of impoundment. Notwithstanding the foregoing:

1. Litters of animals including the nursing mother, and unweaned animals without a mother, may be transferred to an animal welfare organization immediately after impound; and
2. Injured and ill animals may be transferred to an animal welfare organization immediately after or at any time during impoundment upon the representation by such animal welfare organization that it will seek immediate veterinary care for the animal.

For all animals transferred to an animal welfare organization under this section, the organization shall hold the animals for reclaim by the owner the requisite number of days set forth above and may request charges to recover the fair and reasonable costs of care of such animals upon being reclaimed.

E. The department shall establish policies and procedures which shall be used in determining the health and potential identity of impounded animals.

F. If the deputy director or veterinary officer determines that any unclaimed animal is reasonably healthy, currently vaccinated against rabies or vaccinated prior to release for adoption as required, and would not constitute a threat to public or animal health of the community, he may, after the holding period, offer such animal for adoption by using selection criteria established by the deputy director. Individual animals not fitting the selection criteria will not be eligible for adoption, but may be released to an animal welfare organization.

1. Any dog or cat adopted from the center must be spayed or neutered, microchipped, and vaccinated against rabies. Adoption of animals previously unvaccinated against rabies shall not be allowed if a domestic case of rabies is confirmed in the community and the director imposes a rabies quarantine.
2. If any impounded animal, other than a dog or cat, is unclaimed by the owner, the animal shall be held for such time as the veterinary officer deems reasonable, considering the animal's probable value, conditions of health, and suitability for use. Upon expiration of such reasonable time he may offer the animal for sale or adoption to the city zoo or any animal welfare organization, or may have it humanely destroyed.

G. Any animal impounded and suffering from serious injuries may be humanely destroyed after reasonable efforts to determine ownership have failed. Any impounded animal who is in severe, unrelenting pain and symptomatic animals with suspected cases of communicable disease or a suspected case of rabies, as determined by the veterinary officer, shall be euthanized without delay.

H. Animals may be offered for adoption, transferred to an animal welfare organization or euthanized before the end of the required holding period if upon notification of impoundment of the animal the owner states he does not wish to redeem the animal and subsequently in writing releases the animal to the sole jurisdiction of the program.

I. The owner of an animal impounded or quarantined and not redeemed within the required holding period shall be responsible for all associated fees (impoundment, daily handling, euthanasia) whether such animal is claimed or not.

Section 18. That Title 7 (Animals), Chapter 7.16 (Impoundment), Section 7.16.030 (Fees) of the El Paso City Code, is amended to read as follows:

Section 7.16.030 Fees.

A. Impoundment and daily handling fees are established and shall be charged according to animal classification, as follows:

1. Class A – includes dogs, cats and ferrets; and exotic animals NOT requiring capture by department personnel;
2. Class B – includes sheep, lambs, pigs, sows, goats, calves, foals and animals of same approximate size and weight as those specifically listed as Class B animals;
3. Class C – includes cattle, horses, ponies, mules and animals of the same approximate size and weight as those specifically listed as Class C animals;
4. Class D – Exotic animals requiring capture by department personnel.

B. The department may establish vaccination, microchipping, adoption and other services relating to the health and safety of animals and the return of animals to their owners or to new owners, conduct clinics for the public to provide such services, and charge the established fees for such services.

C. The established fee will be charged for animal delivery service requested by the owner of an animal when the animal has been previously redeemed at the center.

D. Fees for all registrations and permits issued under this chapter are established and shall be charged on an annual basis, unless otherwise specifically provided in this title.

E. Any dog, cat or ferret redeemed by or released from quarantine or impoundment to an owner shall be required to meet the vaccination, registration and microchip requirements of this title prior to release. If vaccination, registration or microchipping is performed at the center the established fees for such services shall be paid prior to the release.

F. Dog or cat traps shall be made available to any adult resident of the City of El Paso at no charge. By borrowing a trap, each resident hereby agrees:

1. That all traps will be returned no later than the fifth day after pick-up or delivery of the trap;
2. The program is entitled to reimbursement for the full replacement cost of the trap should it not be timely returned; and
3. To pay the established fee for any trap that may be delivered by the program.

Section 19. That Title 7 (Animals), Chapter 7.24 (Livestock) is amended to change the chapter name to read: Livestock and other animals.

Section 20. That Title 7 (Animals), Chapter 7.24 (Livestock and other animals), Section 7.24.010 (Permits – Livestock.), of the El Paso City Code, is amended to read as follows:

Section 7.24.010 Permits – Livestock.

A. Except in a farm-ranch district or zoning district in which a stockyard or stable is permitted, no person shall keep any livestock within the city without a permit as herein provided.

B. No person shall keep any livestock within the city in violation of the provisions of the zoning ordinance.

C. Application for any permit required in this section shall be made pursuant to sections 7.04.090 and 7.24.050 of this code accompanied by a payment of the established fee for one or more livestock. In addition to the requirements set forth in sections 7.04.090 and 7.24.050, the application shall state the name and residence of the applicant, the location of the premises where such livestock are to be kept, the acreage and square footage of the area in which they are confined, the number of such livestock, and the kind of enclosure within which they are to be kept.

Section 21. That Title 7 (Animals), Chapter 7.24 (Livestock and other animals), Section 7.24.020 (Other animals – Restrictions – Permit Requirements), of the El Paso City Code, is amended to read as follows:

Section 7.24.020 Other animals – Restrictions – Permit Requirements.

A. Pigs. No person shall keep any hog, sow or pig within the city except in a farm-ranch district or zoning district in which a stockyard or stable is permitted, nor shall any person keep any hog, sow or pig within the city in violation of any zoning ordinances. However, this section shall not be intended to prohibit the keeping of Chinese or Vietnamese miniature potbellied pigs maintained as household pets.

B. Rabbits and Fowl.

1. Except in a farm-ranch district or zoning district in which a stockyard or stable is permitted or except where kept as household pets in quantities fewer than six, no person shall keep any rabbit or fowl within the city without a permit as herein provided, and where fowl are allowed, no person shall keep more than three (3) roosters.
2. No person shall keep any animal within the city in violation of the provisions of the zoning ordinance.
3. Application for any permit required in this section shall be made pursuant to Sections 7.04.090 and 7.24.050. In addition to the requirements set forth in Sections 7.04.090 and 7.24.050, the application shall state the location of the premises where such rabbits or fowl are to be kept, the acreage and square footage where such rabbits and fowl are to be kept, the number of such rabbits and fowl, including specifically the number of roosters, and the kind of enclosure within which they are to be kept.

Section 22. That Title 7 (Animals), Chapter 7.24 (Livestock and other animals), Section 7.24.050 (Additional Permit Requirements), of the El Paso City Code, is amended to read as follows:

Section 7.24.050 Additional Permit Requirements.

A. A permit issued under this chapter may include reasonable conditions, including total number of animals, authorized as determined by the veterinary officer to prevent a nuisance. All

conditions of a permit are subject to review and revision by the veterinary officer and the veterinary officer may alter conditions or restrictions of the permit if any investigation indicates any changed conditions or circumstances since the original application.

B. The program shall determine by inspection or otherwise, whether the keeping of animals as proposed in any permit application under this chapter is in violation of any law or ordinance, including but not limited to any zoning ordinance, and whether the keeping of such animals will constitute a nuisance. In making such determination, the program shall consider the following factors and be guided by the following standards:

1. The area of the premises on which the animals are to be kept;
2. Whether the immediate neighborhood is residential or other;
3. Whether the zoning of the premises allows the keeping of such animals;
4. Whether the keeping of animals will endanger the public health or cause odors or noises offensive to persons of ordinary sensibilities;
5. Whether the keeping of such animals considering all the circumstances, is likely to endanger persons or property.

C. The veterinary officer shall verify his approval or disapproval of each application submitted pursuant to this chapter and shall issue or refuse the permit accordingly. The permit may include reasonable conditions determined by the veterinary officer to be necessary to prevent a nuisance, such as but not limited to, the number and kind of animals to be kept thereon.

D. Each permit shall be renewed annually by the last day of the month in which the permit was issued the previous year, accompanied by payment of the established fee. If ownership of the place in which the animals are kept is changed, the permit may be changed accordingly upon written verified application and payment of the established fee for amending the permit.

E. After reasonable written notice and opportunity to be heard, the veterinary officer may suspend or revoke any permit issued under this section for violation of this title by the permit holder or his agent or employee; or if conditions arise which could justify denying the permit on an original application he may review and alter conditions or restrictions of the permit if investigation indicates any changes since the original application.

F. Notice of a permit suspension or revocation must be delivered in person or in writing to the permit holder. A determination of suspension or revocation of a permit issued under this section may be appealed to the city manager in accordance with the procedures established in Section 7.04.100 of this code.

Section 23. That Title 7 (Animals), Chapter 7.24 (Livestock and other animals), Section 7.24.060 (Sale of certain baby chickens, ducklings, other fowl, rabbits and turtles prohibited), of the El Paso City Code, is amended to revise the section name and to read as follows:

Section 7.24.060 Sale of certain baby chickens, ducks, other fowl, rabbits and turtles prohibited.

A. It is unlawful to sell, offer for sale, barter or give away baby chickens, ducks, or other fowl under three weeks old; rabbits under two months old; or viable turtle eggs and live turtles with a carapace (shell) length of less than four (4) inches except as permitted by federal law or regulation, as pets, toys, premiums, or novelties.

B. As used in this section, the term "turtles" includes all animals commonly known as turtles, tortoises, terrapins, and all other animals of the order Testudinata, class Reptilia, except marine species (families Dermachelidae and Chelonidae).

Section 24. That Title 7 (Animals), Chapter 7.24 (Livestock and other animals), Section 7.24.070 (Coloring of chickens, ducks, other fowl and rabbits unlawful), of the El Paso City Code, is amended to revise the section name and to read as follows:

Section 7.24.070 Coloring of chickens, ducks, other fowl and rabbits unlawful.

It is unlawful to color, dye, stain or otherwise change the natural color of any chicken, duck, other fowl, or rabbit or to possess for the purpose of sale or to be given away any chicken, duck, other fowl, or rabbit which has been so colored.

Section 25. That Title 7 (Animals), Chapter 7.24 (Livestock and other animals), Section 7.24.080 (Payment of single permit fee), of the El Paso City Code, is amended to read as follows:

Section 7.24.080 Payment of single permit fee.

Premises with animals in more than one permit category under this chapter shall be charged one fee for all permits. Such fee shall be equal to the amount of the highest individual permit fee, which would have been charged if the permits had been separately issued. Permit fees are not to be prorated or refunded.

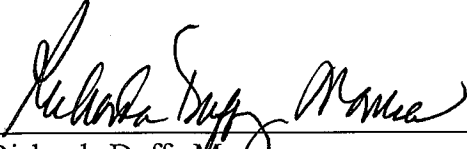
Section 26. That existing code sections numbered and titled as 7.24.090 (Sale of certain baby chickens, ducklings, other fowl, rabbits and turtles prohibited), 7.24.100 (Coloring certain baby chickens, ducklings, other fowl and rabbits unlawful), 7.24.110 (Payment of single permit fee), 7.24.120 (Severability), and 7.24.130 (Fees) of Title 7 (Animals), Chapter 7.24 (Livestock) El Paso City Code, shall be deleted in their entirety.

Section 27. This ordinance shall take effect on January 1, 2011.

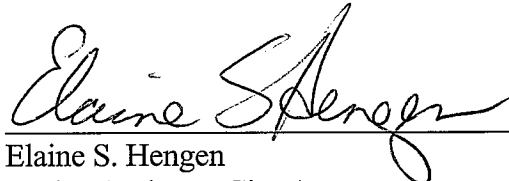
Section 28. Except as expressly herein amended, Title 7 (Animals) of the El Paso City Code shall remain in full force and effect.

ADOPTED THIS 5TH day of October 2010.

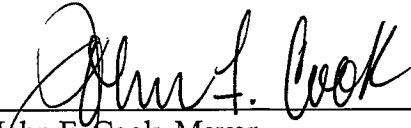
ATTEST:


Richarda Duffy Morsen
City Clerk

APPROVED AS TO FORM:


Elaine S. Hengen
Senior Assistant City Attorney

THE CITY OF EL PASO:


John F. Cook, Mayor

APPROVED AS TO CONTENT:


Michael Hill, Director
Department of Public Health

CITY CLERK DEPT.
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